

use proper Markush grouping. Finally, the Examiner notes that glycerol [glyceryl] monostearate is not a carbohydrate by definition. However, one of ordinary skill in the art knows and understands that the FDA classifies glycerol as a carbohydrate.

The Examiner finds Claims 4, 5, 7, 20 and 24 to be indefinite because of the terms "carbohydrate-based", "sucrose-based" and "glucose-based". According to the Examiner these terms are unclear. Previously, in the interest of moving this application along, Applicants amended the claims to specify what sterol-based is. However, there is no apparent reason why, and the Examiner has not set forth a reason why or how these terms are not to one of ordinary skill in the art. It is simply stated by the Examiner that it is not clear what is encompassed by these terms. The use of the word "based" following materials such as carbohydrates, sucrose and glucose is commonly used and known. As previously mentioned, Applicants submit examples of U.S. patents with respect to the Examiner's rejection of the term "derivative". One of those examples, U.S. Patent Number 5,616,359, also demonstrates the commonly used term "-based" as well (see reference to "egg-based"). Therefore, there is no basis under provisions of §112 that renders the aforementioned terms unclear. The claims of the present invention fully comply with the requirements of §112, and Applicants request that these rejections be withdrawn.

## II. The Examiner's Rejection under 35 U.S.C. §103

In the present Office Action, Claims 1, 2, 7 to 11, 14 to 17, 21, 23, and 25 remain rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 5,567,420 issued to McEleney et al. ("the '420 reference"). Previously, the Examiner found the present invention obvious in view of the '420 reference or the '049 reference in combination with U.S. Patent No. 5,424,070 ("the '070 reference"). The compositions of the present invention are non-emulsion mousse-textured compositions containing alkali salts of fatty acid esters and substantially no oil are not taught or suggested by the '420 reference. Herein, Applicants direct their comments to the '420 reference as the Examiner's present response addresses only this reference. In particular, the Examiner, finds that the '420 reference discloses all of the components of the present claims can be used in a composition, and therefore, one of ordinary skill in the art would be motivated to use any combination of the prior art to achieve a desired result. However, in Applicants' Response of September 26, 2002, it was noted, and it is presently reasserted, that this is not the case because the '420 reference fails to disclose a composition that has substantially no oil in combination with an alkali metal salt. Therefore, one of ordinary skill in the art is not motivated to use the '420 reference as a basis for achieving the present invention, either alone or in combination with the other cited references.

Further, in support of the Examiner's present response, *In re Kerkhoven*, 205 USPQ 1069, 1072 (CCPA 1980) ("*Kerkhoven*") is cited for positing that a *prima facie* case of obviousness is found when two compositions are combined to form a third composition and all three compositions are used for the same purpose. However, Applicants assert that reliance on this case is misapplied to the present claims because in *Kerkhoven* the claims at issue were described as requiring no more than the mixing together of two conventional detergent compositions, and all three compositions were used for the same purpose. *Kerkhoven*, at 1072. The claims in *Kerkhoven* are in contrast to the present claims, and therefore, do not apply. First, a mixture of any ingredients taught in the '420 reference will not combine to make the non-emulsion mousse-textured composition of the present invention. A non-emulsion composition containing an alkali metal salt in combination with substantially no oil is not taught in the '420 reference. Second, the '420 reference fails to selectively pluck out of the multitudes of ingredients that are suggested as being added as ingredients in the '420 lotion (emulsions) the ones of the present invention, nor does it teach or suggest that these particularly selected ingredients combine to make a non-emulsion mousse-textured composition like that of the present invention. Third, the purpose of the '420 reference is to make a lotion whereas the purpose of the present invention is to make a non-emulsion mousse-textured composition. The mousse-texture of the present invention is a novel alternative to the traditional stick technology. Therefore, the purposes between the '420 reference and the present invention are indeed different and the *Kerkhoven* case does not apply to the circumstances of the present case.

The compositions of the present invention, are non-emulsion mousse-textured compositions containing an alkali salt of a fatty acid ester and substantially no oil. Previously, Applicants submitted CTFA documents that were cited in the '420 reference. The Examiner states in the present response that "[Applicants argue] that the only way previously known of making mousse-textured compositions was that disclosed by the CTFA documents." This was not an argument stated by Applicants. It is clearly noted at page 3, of Applicants Response of September 26, 2002 that the documents are cited in the '420 reference. Applicant's argument then and now is that the '420 reference fails to render the present invention obvious because none of the mousse formulations taught or suggested by the '420 reference have a combination of an alkali metal salt and substantially no oil. Therefore, Applicants request that the obviousness rejection based on the '420 reference be withdrawn. As presented above, the '420 reference, alone or in combination with the other previously cited references, fails to teach or suggest the present invention because they fail to teach or suggest a mousse-textured composition containing substantially no oil and containing an alkali salt of a fatty acid ester, and Applicants request that the §103 rejections be withdrawn.

**CONCLUSION**

In view of the arguments presented above in the present submission, the claims are believed to be in condition for allowance, and issuance of a Notice of Allowance is respectfully solicited.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Dorene Price", written over a horizontal line.

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**MARKED AMENDMENTS**

4. (Amended) The composition of claim 1 [in which the] further comprising a surfactant/emulsifier that is carbohydrate-based.

8. (Amended) The composition of claim 7 in which the surfactant/emulsifier is selected from the group consisting of PPG-20 methyl glucose ether, PPG-20 methyl glucose distearate, methyl gluceth 10, methyl gluceth 20, glyceryl monostearate, sucrose distearate, [or] and PEG 120 methyl glucose dioleate[, in place of PPG-20 methyl glucose ether].

21. (Amended) The composition of claim 15 further comprising a surfactant/emulsifier that is selected from the group consisting of PPG-20 methyl glucose ether, PPG-20 methyl glucose distearate, methyl gluceth 10, methyl gluceth 20, glyceryl monostearate, sucrose distearate, [or] and PEG 120 methyl glucose dioleate.

24. (Amended) The composition of claim 15, which comprises isoprene glycol, sodium behenate, and water, and further comprising a carbohydrate-based surfactant[, and water].